

Minutes of the Board of Adjustment meeting held on Monday, May 9, 2011, at 5:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Preston Olsen, Chair
Roger Ishino, Vice-Chair
Rosi Haidenthaller
Joyce McStotts
Ray Christensen, Senior Planner
Tim Tingey, Community & Economic Development Director
G.L. Critchfield
Citizens

The Staff Review meeting was held from 5:15 to 5:30 p.m. The Board of Adjustment members briefly reviewed the applications. An audio recording is available for review in the Community & Economic Development office.

Preston Olsen explained that variance requests are reviewed on their own merit and must be based on some type of hardship or unusual circumstance for the property and is based on state outlined criteria, and that financial issues are not considered a hardship.

APPROVAL OF MINUTES

Roger Ishino made a motion to approve the minutes from April 11, 2011 as written. Joyce McStotts seconded the motion.

A voice vote was made. The motion passed 4-0.

CONFLICT OF INTEREST

There were no conflicts of interest for this agenda.

CASE #1430 – WILLIAM GREEN – 223 West Winchester Street – Project #11-20

William Green was the applicant present to represent this request. This item was continued from the April 11, 2011 meeting. Ray Christensen reviewed the location and request for a variance to eliminate the requirement to construct a 6-foot masonry wall as a buffer between R-N-B zoned property and residential property. The variance is requested for the property located at 223 W. Winchester Street. Murray Code Section 17.140.110 requires that a 6-foot high masonry wall be constructed where R-N-B zoned properties abut properties planned for residential use in the General Plan. The requested variance is to eliminate the requirement to construct a masonry wall. The Planning Commission approved a conditional use permit allowing construction of a coffee and shaved ice business on the site on September 2, 2010. An existing residence also exists on the property. As a condition of approval, the applicant was required to install a 6-foot high masonry wall in accordance with the requirements of the R-N-B zoning district. The applicant has requested that the requirement be waived based on the location of existing utilities in the area. The City Water and Sewer Department has indicated that there is a private sewer lateral in the general location of the line shown on the applicant's submitted exhibit. The planning staff received information earlier this morning indicating that the sewer line runs fairly close to the fence line from the east side within a couple of feet, crosses under the fence, and runs west to approximately 48 feet and is within about 6 feet of the fence line. The Water Department has also submitted information earlier today but there has not been adequate time to thoroughly

review the information and staff feels this information and therefore staff recommends that this application be continued to the next meeting.

Roger Ishino clarified that the sewer line runs east to west and is in close proximity to the fence.

William Green, 223 West Winchester Street, apologized for not having the water line location information submitted at an earlier time. He stated that he did not have funding to pay for the locating of the water laterals until last Thursday at which time he called Danny Astill, Water Superintendent, who was on vacation until today. He stated that the officials and a plumber were at the site this morning and marked the line on the property and was verified by Murray City inspectors. The sewer line is exactly as noted on the map submitted to the Board. Mr. Green stated the line runs approximately 6-8 feet south of the sewer line and running parallel is also a fresh water line. He stated that almost every square inch of the fence is obscured by either the sewer line or the water line. He stated he is amenable to a continuance of his application.

Rosi Haidenthaller asked what type of a compromise Mr. Green is willing to do because a masonry wall requires footings but the spirit of law requires some type of a barrier between residential and commercial zoning. Mr. Green stated he is open to suggestions. He stated the idea of a barrier is to prevent impacts from the commercial business onto the residents. He stated he has interviewed his neighbors on both sides who have indicated that they never hear anything from his business. He stated that he does not make much noise.

Joyce McStotts made a motion to continue this item to the June 13, 2011 meeting.
Seconded by Roger Ishino.

Call vote recorded by Ray Christensen.

A Mr. Olsen

A Mr. Ishino

A Ms. McStotts

A Ms. Haidenthaller

Motion passed 4-0.

The Findings of Fact were not approved as this item was continued.

CASE #1432 – MARTIN & MIKE LINGWALL – 6441 South 700 West – Project #11-31

Martin Lingwall was the applicant present to represent this request. Ray Christensen reviewed the request for a rear yard setback variance to locate an accessory garage in the side and rear yard area at the property addressed 6441 South 700 West. Murray City Code Section 17.100.090 E. requires a rear yard accessory building to be located 6 feet or more behind the dwelling. Mike and Martin Lingwall are requesting a rear yard setback variance to locate an accessory garage in the side and rear yard area due to the shape of the lot. The property is a flag lot and is a large property with .77 acre. The position of the house with the rear yard, side yard and shape of the lot makes it difficult to locate this garage in the rear yard of the lot without a variance. The applicant's

narrative indicates the flag lot irregular shape of the property makes it difficult to locate the garage in the rear yard area in order to comply with the 6 ft. setback behind the dwelling. Due to the shape of the property and location of the dwelling, there is hardship for the applicant to locate the detached garage structure within the rear yard area 6 feet behind the dwelling. The shape of the property is on an angle and narrows to the east at the back yard area in which the proposed garage will be partially located in the side yard area. If the lot was a standard rectangular shape lot, the garage could fit in the rear yard area. The purpose of setbacks is to provide for adequate fire separation between structures and properties to protect the health, safety and the welfare of adjacent property owners by providing adequate space between structures in order to mitigate impacts of building. In this case there appears to be adequate separation. There are two special circumstances that apply to the property that do not generally apply to other properties zoned R-1-8. First, the property is a large flag lot with .77 acre and the shape of the lot is unusual. The other circumstance is the position and the angle of the dwelling which affects the side yard area and rear yard area creates some difficulty to locate the proposed garage in the rear yard area to meet the required setback. Other properties in the area that have standard shaped lots are able to locate a garage in the rear yard area to meet the setback requirements. In this case, due to the shape of the lot and location of the dwelling a variance is needed to construct the garage at the proposed location. There are circumstances peculiar to property with the flag lot shape and location of the dwelling. The circumstances do create a hardship or deprive the owner of rights or privileges granted to other properties in the district. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development Staff finds that the proposal meets the standards for a variance. Therefore, staff recommends approval for the proposed variance.

Martin Lingwall stated he is the owner of the home at 6441 South 700 West. Mr. Lingwall stated the reasoning for the proposed garage location is to provide for a better turn around. If the garage were to adhere to the setback requirements, it would be virtually unusable and would not allow for proper access to the garage. He stated this property is large and there is plenty of room on the property for the garage and does not negatively affect any surrounding neighbors.

Gerry Butler, 623 West Krista Court, stated his property is adjacent to the proposed site when he walks out onto his deck he would view the proposed garage. He stated several big trees have been removed in preparation of this garage. He expressed concern with the size of the structure in relationship to the home. He asked if the garage will have storage of equipment and the intended use of the structure.

Ted Maestas, 609 West Krista Court, stated he is also representing neighbors. He stated that behind his property an individual bought a piece of property with the intent of not doing anything on the property and today Wilson Construction stores material and automobiles and he has called the city inspectors several times in this regard and also a shed has been built on the property. He expressed concern with the intent of the use of the property and if this proposed accessory structure is intended for construction equipment or materials.

Katherine Hanna, 639 West Krista Court, stated her property is adjacent to the north of the property in question. She stated she spoke with Mike Lingwall on the phone who indicated that he will be storing recreational vehicles and motor homes in the proposed garage. She expressed concern about the property structure impacting their view. She

stated there is approximately a 15 foot drop in property grade and the accessory structure is approximately 20 feet in height. She stated that the property owners have the right to use their property and are not opposed to this request.

Michael Hanna, 639 West Krista Court, stated he is not particularly opposed to this request. He inquired about the aesthetics and use of the proposed garage. He indicated that a few years ago they lived in a neighborhood not too far from this location wherein a neighbor constructed a large garage that turned into a diesel repair shop. He expressed concern that the proposed garage not be used for a business.

Martin Lingwall commented that the intent of the garage is to be able to store all their recreational vehicles, a trailer and a backhoe. He stated he has been a developer for 30 years but this garage is not intended to be used as a business.

Rosi Haidenthaller asked Mr. Lingwall about being in the construction business. Mr. Lingwall responded that he is a developer and real estate broker and he is in the construction business. He stated that they do use a backhoe on site but they wish to store the backhoe inside this garage during the winter months to keep it out of the weather.

Roger Ishino asked about the aesthetics of the garage. Mr. Lingwall responded that the garage will be a 40' X 60' metal building and will be a color similar to the home such as cream or light yellow. He stated that a couple of the trees were deteriorating and removed to prevent the trees from falling over and damaging adjacent property and was not because of the proposed garage. He stated the proposed structures meet the side and rear yard setbacks and will not be visible from the road because it sits back well over 200 feet from 700 West and has easy access into the garage. The proposed location of the garage does not impact anyone's view.

Rosi Haidenthaller asked if the flag lot drive access is over 200 feet in length and how much additional footage there will be in order to access the garage and the access to the closest fire hydrant. Mr. Lingwall responded there are fire hydrants on 700 West and Winchester Street and are close enough for fire access.

Katherine Hanna asked about the roofing materials for the garage since their home will be looking down on the garage. Mr. Lingwall responded that the metal roof will be the same color as the building such as a cream color or light yellow color.

Rosi Haidenthaller made a motion to grant the variance as requested based on the fact that this is a flag lot with an unusual shape and the position of the dwelling and the angle of the dwelling creates a hardship for locating the garage in the rear yard. Seconded by Joyce McStotts.

Call vote recorded by Ray Christensen.

A Ms. Haidenthaller

A Ms. McStotts

A Mr. Olsen

A Mr. Ishino

Motion passed 4-0.

Roger Ishino made a motion to approve the Findings of Fact for Mike & Martin Lingwall as written. Seconded by Joyce McStotts.

A voice vote was made. The motion passed 4-0.

CASE #1433 – PERRY & ASSOCIATES – 6260 S State Street & 17 East Winchester Street – Project #11-38

Matt Swain was the applicant present to represent this request. Tim Tingey reviewed the location and request for a variance to the landscaping requirements of the C-D-C zoning district for the property located at 6260 S. State Street and 17 E. Winchester Street. The building was constructed in 1993. Murray Code Section 17.160.100 C. requires that a minimum 10-foot width landscaping buffer be installed where the commercial property abuts residential property. The applicant has requested two variances, both related to the required 10-foot buffer landscaping adjacent to residentially zoned property. The first variance request is for a portion of the required landscaping along the north property line. The applicant previously received a variance of 3 feet for the landscaping along the north property line allowing for a 7-foot landscaping area. When the landscaping was constructed it was tapered down to 4 feet but increased to almost 11 feet on the west. The applicant has requested to allow for the existing 4 feet to remain instead of the 7 feet approved by the board originally. The second variance is for a portion of the landscaping along the west property line. The approved plan originally included 10 feet of landscaping in this area. At some point subsequent to the original approval, the landscaping was replaced with concrete and bollards along the wall to allow for maneuvering of delivery vehicles. In analyzing the request, staff has reviewed the two requests independently as the location of the requested variances are separated by several hundred feet and located on opposite sides of the building. The Board of Adjustments previously approved a variance for the north side of the property based on difficulties with large trucks accessing the rear of the building because of the irregular shape of the parcel at the northeast corner of the building. The property narrows diagonally from west to east and creates a pinch-point at the corner of the building. Although the variance approved allowed for a 7-foot width, the landscape area was constructed with an approximate 4-foot width at this location widening to 11-plus feet to the west. Because the landscaping widens as it extends from east to west the landscaping achieves the previously approved 7 feet relatively quickly. Therefore requiring widening of the landscaping in this area would create an unnecessary hardship, which would not increase the landscaping in the area in an amount equal to the impacts to the property.

The requested variance for the west side of the building would completely eliminate the required landscape buffer for an approximate length of 40 feet along the property line. In this particular instance, landscaping was approved but either it was not installed in accordance with plans or it was removed and replaced with concrete and bollards after the final approval of occupancy for the building. In this location there was not a previous variance and there appears to be adequate room for landscaping meeting the standards of the Code. The applicant previously indicated that the landscaping in this area could be accommodated while allowing for operations of the business, which was reflected in the approved site plan. Landscaping was removed without approval of a variance and without the benefit of review and approval by the board of adjustment. Therefore landscaping should be installed in this area as originally approved. Allowing for the variance on the north side of the property will allow for reasonable access to the rear of the building while maintaining landscaping along the entire frontage. The requested

variance on the north side of the property is not contrary to the public interest and will not substantially affect the general plan as landscaping exceeding the standard is provided elsewhere along the north property line. The existing landscaping on the north side of the property provides some buffering and actually exceeds the ordinance on the northwest corner. Granting a variance in this area is in harmony with the spirit of the ordinance. Granting the variance on the west property line would not be in keeping with the spirit of the land use ordinance, which contains buffering standards specifically to protect adjacent residential properties. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, Community and Economic Development Staff finds that the proposed variance on the north side of the property meets the standards for a variance. Therefore, staff recommends approval of the requested 6-foot variance to the landscape buffer requirements on the north side of the property. Staff finds that the requested variance on the west side of the property does not meet the standards for a variance. Therefore, staff recommends denial of the requested 10-foot variance to the landscape buffer requirements on the west side of the property.

Matt Swain, representative of Perry & Associates, Inc. at 6260 South State Street, stated this shopping center has been in operation for approximately 18 years. He stated that he was not with Perry & Associates at the time the building was constructed and cannot respond as to why the building was not built as it was designed. Mr. Swain explained the westerly section of the property has issues relating to trucks backing over the landscaping strip. Mr. Swain stated in speaking with the employees of the company who have been there for many years, the landscaping was installed as it exists for not having constantly torn up landscaping. He stated it is evident where there are skid marks and the paint is worn from the curb from continual use caused by the trucks maneuvering to back into the loading dock and is not practical for them to make that maneuver without going over the concrete pad. He stated the city approved the site plan and the turning radius and was based upon code. After the fact the property owner installed bollards to protect the residential property and the landscaping from becoming a big muddy mess from the trucks twisting their tires to make the turn. He stated this situation has functioned this way for many years and hopes to continue to let it function in the same manner. He stated if the staff recommendation is complied with, the fact of the matter is that the landscaping will just get torn up and there won't be landscaping even though it may be designated landscaping on the site plan.

Rosi Haidenthaller asked about the turning radius or distance between the truck bay and the edge of the red curb, and how it relates to the size of the trucks, i.e. are the trucks larger now than in the past, and how many deliveries are there on a daily basis. Mr. Swain responded that the site plan was based on what works on paper, but in reality does not work. He stated the truckers do not take time to make additional angled stops and starts to maneuver around the landscaping. He stated that he does not know how many deliveries there are to the site on a daily basis.

Roger Ishino asked Mr. Swain if he is indicating that the turning radius is an impossibility or are the truckers not putting forth the effort to make the turn. Mr. Swain responded that when the property was originally designed, it was designed per the city code and was designed to allow the necessary trucks to make their deliveries. He stated that he is not indicating it is an impossibility to make the turning radius, but the reality is that the

turns are not being made in a fashion that does not drive over the landscaping or curb and there is no way to enforce it.

Grant Parry, 6351 South Clay Park Drive, stated his home is adjacent to the south of the property in question. Mr. Parry commented that the entire strip has an unauthorized variance of approximately 3 feet the entire length of the project. He expressed concern in this regards. He stated the trucks are a nuisance to the residential area and very frequently he is awakened during the night hearing trucks idling. He stated he is opposed to anything that brings commercial development closer to the neighborhood. He asked if barriers could be installed to protect the landscaping as well as installed to protect masonry such as the bollards. Mr. Parry asked about the variance on the northerly part of the property. Ms. Haidenthaller explained the request is to maintain the existing 4 foot width of landscaping at the northern portion of the property. In order to make this area compliant with the previous variance granted, the landscaping should be widened an additional 3 feet for a 7 foot landscaping width.

Aaron Hamilton, 6211 South Valley Drive, stated his property abuts the property in question. He asked if this request will be changing the property and will there be removal of trees. Mr. Preston responded that the property is not changing but the landscaping is currently out of compliance and an additional 3 feet of landscaping should be installed in order to be compliant with the variance that was granted years ago. The request is to not have to install the additional 3 feet of landscaping on the northerly portion of the property. He stated removal of any trees is not part of this variance request.

Tom Barnard, 205 East Vine Street, stated he is the owner of the property at 6330 South State Street and is adjacent to the property in question. Mr. Barnard stated he remembered seeing that area many years ago where there is concrete as opposed to the required landscaping. He stated the fact remains that the trucks accessing this area are large trucks and there is not much room for maneuvering, especially if there is more than one truck at the same time and requiring the landscaping is not practical and will just be destroyed by the trucks. He stated the property is well maintained and complimented the property owners in regards to their management. He stated he was in favor of the variance request.

Rosi Haidenthaller stated that these types of situations are difficult for the Board of Adjustment to decide whether the literal enforcement of the ordinance causes a hardship for the applicant. The comment that the trucks should be able to maneuver in and out of the bay is the real issue. But, the fact of the matter is that they have not been able to over the years and thus something that was in compliance in the beginning when the building was built was changed because of the feasibility of this particular area was being damaged by the large trucks. She commented that the Board needs to consider even though the trucks should be able to make the turning radius into the bay, is it practical to require this and if the literal enforcement of the ordinance is required, the landscaping may become damaged and run down. Preston Olsen concurred. He explained that, in his opinion, both variances may be warranted because the lot is unusually shaped to the north and due to the unusual circumstances, it may be a good solution to what is in the rear of the building.

Roger Ishino commented that the feasibility of the turning radius and maintaining concrete as opposed to landscaping is certainly easier. He acknowledged the comments of the noise nuisance from the idling trucks and that a few extra feet of landscaping would not help this situation. He commented that a variance may be warranted for this particular situation.

Tim Tingey commented that the Board needs to keep in mind the standards for granting or denying a variance and that there needs to be justification under the standards for any decision. He commented that the ordinance states that "the Board of Adjustment may not find an unreasonable hardship if the hardship is self-imposed or economic".

Rosi Haidenthaller stated that when the property was developed in 1993, possibly the entire project should have been shifted 10 feet forward but wasn't and the city can't require the building to be torn down to meet the code. Mr. Tingey stated the fact that the property was not developed to meet the code doesn't eliminate the standards and may be something that was self-imposed. He stated that whatever decision the Board makes, there needs to be justification based on the standards.

Preston Olsen commented that this is a difficult variance request because the reality of the situation is that there is a good solution but may not meet the criteria in which to grant a variance.

Joyce McStotts commented that there are two separate variance requests. She made a motion to grant the variance at the northerly portion of the property and allow the 4 feet of landscaping to remain according to the recommendation of staff. The motion was seconded by Rosi Haidenthaller.

Call vote recorded by Ray Christensen.

A Ms. McStotts

A Mr. Olsen

A Mr. Ishino

A Ms. Haidenthaller

Motion passed 4-0.

Rosi Haidenthaller commented that the code comes to protect the residential neighborhood from the impact of commercial use. She questioned if the residents who live directly west of this particular 40 foot strip of property and if the impact is minimal at this point, maybe the task is being accomplished of buffering with the masonry wall.

Roger Ishino commented that in reality, any additional landscaping at this location would ultimately be destroyed and will detract from the property appearance. Mr. Tingey stated the types of landscaping for this area may consist of grass and/or have some component of trees or shrubs and potentially rock and there is some flexibility for landscaping.

Joyce McStotts asked the width of the cement pad. Mr. Tingey responded it is 10 feet wide east to west.

Matt Swain stated that there are a lot of skid marks along the curb and the trucks are using all of the 40 foot area (including the sidewalk area) and not just 10-15 feet to maneuver the trucks. There are two loading docks and each loading dock is about 10-12 feet. He stated no matter what type of landscaping were to be installed, it will be impacted in the future and the end result will be the same.

Joyce McStotts asked if the Board has the ability to make suggestions for the variance. Mr. Tingey responded that the variance request is for the elimination of the 10 foot landscape buffer, however, there could be approvals for something less than the required 10 foot landscaping buffer width.

Grant Parry, 6351 South Clay Park Drive, stated what matters to him the most is not the appearance but the noise. He stated it is worse to have a truck making a 50-point turn than it is for the truck to be able to make the turn. He stated that he withdraws his objection to this variance and asked if the developer could meet with him individually to discuss noise abatement.

Tom Barnard, 205 East Vine Street, stated the tractors are between 8,000-10,000 pounds each and when they are grinding a front wheel to make a turn there isn't any thing that will support that adequately other than concrete.

Marjorie Jensen, 6874 South Rye Circle, West Jordan, stated she is the trustee of the property. She asked that rocks not be installed in the landscaping area because there are numerous teenagers who walk along this area and the rocks will end up over the fence in the residential yards and the teenagers also use the electrical box to hop the fence into their yard and onto the street.

Rosi Haidenthaller made a motion that the variance along the west property line be granted because A-) the literal enforcement would cause an unreasonable hardship because the problem with the business and the delivery trucks exist and there is no reasonable way to change the situation although the trucks should be able to make the turn, they have not in the past. The property owners have made a reasonable effort to revive the landscaping originally but have found it necessary to install concrete. B-) The special circumstances attached to the property are, although it might be unique, just the narrowness of the strip does affect multiple trucks being there at one time does create a hardship. C-) Granting the variance is essential to the property owners. D-) The General Plan tries to protect the residential neighborhood from the impact from commercial uses and the masonry wall buffer does provide some protection for the residential area. Although landscaping would be a great thing because of the feasibility of the way the property is used makes it not feasible. The reason the Board of Adjustment exists is so that variances can be issued in cases where there seems to be a reasonable amount of hardship and that she believes there is a reasonable amount of hardship with this property. Ms. Haidenthaller stated that there may have been a precedence set and in the past the Board has granted variances for businesses for similar situations because of the ability of trucks to access the property. She cited a similar example on Van Winkle and 5600 South and similar situations involving rear yard landscaping because of the feasibility of installing the landscaping. Seconded by Joyce McStotts.

Joyce McStotts commented that this request is a very difficult request and it appears the property owners have done everything they can to meet the requirements. She stated

that there may be other options, but they are limited and therefore she seconded the motion. Preston Olsen concurred.

Call vote recorded by Ray Christensen.

A Ms. McStotts

A Mr. Olsen

N Mr. Ishino

A Ms. Haidenthaller

Motion passed 3-1.

Roger Ishino indicated his nay vote was relative to Mr. Tingey's previous comments.

Rosi Haidenthaller made a motion to approve the Findings of Fact for Perry & Associates based on the discussion of this meeting. Seconded by Joyce McStotts.

A voice vote was made. The motion passed 4-0.

Meeting adjourned.

Tim Tingey
Director of Community & Economic Development